IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 61 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

==========

COMMISSIONER OF WEALTH-TAX

Versus

ANILKUMAR M. VIRANI

Appearance:

MR B.B. NAIK, Standing Counsel for the Revenue
MR B.D.KARIA WITH MR. R.K. PATEL, Advocates for the Assessee

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench `C' has referred the following question under section 27 of the Wealth Tax Act, 1957 for the opinion of this Court :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the house property was used for residential purpose and therefore, the assessee was entitled to the benefit of section 7(4) of the Wealth Tax Act, 1957 so as to have the property valued as of 1st April 1971 ? "

2. The matter pertains to the Assessment Years 1978-79 to 1980-81 in respect of which, in the Returns of Wealth Tax for these two years, the assessee took up a stand that the value of the house property should be taken in the Assessment Year 1971-72 at Rs.2,17,400=00, and not as per the valuation report at Rs.9,34,650=00. The Wealth Tax Officer, holding that the assessee was a non-resident and the property was not occupied by him for the whole year, held that section 7(4) of the said Act was not applicable to him, and that the valuation of the house property should be taken as per the valuation report.

3. The Appellate Assistant Commissioner of Income Tax, by his common order dated 19th January 1984 made in three appeals filed by the assessee against the orders of the Wealth Tax Officer, held that the intention of the appellant whether the house property was exclusively kept for residential purposes throughout the year immediately preceding the valuation date was to be looked into. If the assessee did not let out the property and kept it for his own residence, the provisions of section 7(4) of the Act would be applicable notwithstanding that it remained vacant on account of his absence. Allowing the appeals, it was held that the Wealth Tax Officer had erred in not accepting the valuation of the property at Rs.2,17,400=00 and the Wealth Tax Officer was directed to adopt that value.

4. The orders of the Appellate Assistant Commissioner were challenged before the Tribunal and the Tribunal, by its order dated 18th June 1986, dismissed the appeals of the Revenue, holding that the words "exclusively used by him for residential purposes

throughout the period of twelve months immediately preceding the valuation date" should be interpreted pragmatically, fairly and reasonably and not in a pedantic sense. It was held that the term `used' did not mean that the assessee should be in physical possession of the house or any part of it and it only meant that the house was used by him as a residence and not with a view to make any income or profit out of it.

5. Section 7 of the said act lays down as to how the value of assets should be determined. Sub-section (4) thereof, which is relevant, reads as follows :-

"7.

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) Notwithstanding anything contained in sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken to be the price which, in the opinion of the Wealth Tax Officer, it would fetch if sold in the open market on the valuation date next following the date on which he became the owner of the house, or on the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later :

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this sub-section shall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf in the return of net wealth.

Explanation : For the purposes of this sub-section-

(i) where the house has been constructed by the assessee, he shall be deemed to have

become the owner thereof on the date on which the construction of such house was completed ;

(ii) "house" includes a part of a house, being an independent residential unit. "

6. Admittedly, though the assessee did not actually stay in the house property in question, it was kept reserved for his residential purposes and was not let out to any one. The expression "exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date", if construed in a narrow manner, would lead to an absurd situation expecting the assessee to remain in actual physical occupation all throughout the year. Person using a house for his residential purpose does not cease to use the same for such purpose when he is away from his residential house. Use of a house for residential purpose does not require a compulsory residence in that house and it only requires that the house should be exclusively reserved and available for the residential purposes of the assessee all the time. The essential aspect of the matter would be whether the assessee has retained exclusive control over the possession of the house owned by him and though he may not be actually present in the house when he is away from it, he is still in the constructive possession of his residential house. So long as he intends to use his house and retains it exclusively for his residential purposes, the house would be said to be exclusively used by him for his residential purposes. The material aspect of the matter is that he has intention to remain in that house and not to give it up. By retaining the constructive possession of the house and intending it to be kept exclusively for his residential use, he would become entitled to the benefit of the provisions of section 7(4) of the said Act.

6.1 Similar aspect came up for consideration before the Madras High Court in Commissioner of Income Tax v. W. Doraisamy, reported in 215 ITR 853, and it was held by a Division Bench that the expression "exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date", can mean nothing but that the intention or animus manendi (i.e. the intention of remaining - see Bouvier's Law Dictionary and Black's Law Dictionary, 5th Edition) of the assessee was to live in the house, and that he had not created any interest in the said property in favour of any other person, that is to say, there is no element of right of any other person in the house property. In

such a case, the house belonging to the assessee is exclusively used by him for residential purposes throughout the period he has kept it available to himself for occupation whenever he desired. The Madras High Court, approvingly referred to the reasoning of the Andhra Pradesh High Court in Commissioner of Wealth Tax v. B.M.Bhandari, reported in 123 ITR 554, in which the expression in section 5(1)(iv) of of the said Act "exclusively used by him for residential purposes" was considered, and it was held that the requirement of exclusive use by the assessee of the house property for residential purposes must be construed pragmatically, fairly and reasonably and not in a pedantic sense or impracticably. It was observed that the assessee need not be expected to use his building throughout the year or without any interruption and he may not actually use the house by himself, and that unless he let out the same for rent or allow it to be used for any commercial purpose, it cannot be said that he has not exclusively used it for residential purpose. As held by the Queen's Bench Division in Queen v. St. Pancras Assessment Committee, reported in [1987] 2 QBD 581, legal possession does not of itself constitute an occupation, and that the owner of a vacant house is in possession. If he furnishes it and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year. Therefore, the real test is whether his house is exclusively reserved for his residential purposes by the assessee, whether he actually remains in it or whether he is away from it retaining its exclusive constructive possession with him.

7. In the above view of the matter, we are of the opinion that the Tribunal was right in holding that the house property in question was used for residential purpose and therefore, the assessee was entitled to the benefit of section 7(4) of the Wealth Tax Act, 1957 so as to have the property valued as on the valuation date relevant to the assessment year commencing on the 1st day of April 1971. The question referred to us is, therefore, answered in the affirmative against the Revenue and in favour of the assessee. The reference stands disposed off accordingly with no orders as to costs.

APRIL 19, 2002 [R.K.ABICHANDANI, J.]

[KUNDAN SINGH, J.]

parmar*